



COMMONWEALTH OF KENTUCKY  
OFFICE OF THE GOVERNOR

MATTHEW G. BEVIN  
GOVERNOR

700 CAPITOL AVENUE  
SUITE 100  
FRANKFORT, KY 40601  
(502) 564-2611  
FAX: (502) 564-2517

December 17, 2018

*Via U.S. Mail*

CJ Ciaramella  
MuckRock News  
DEPT MR 65578  
411A Highland Avenue  
Somerville, Massachusetts 02144

Re: Your open records request

Dear CJ Ciaramella:

The Office of Governor Matthew G. Bevin has received your open records request, dated December 12, 2018, for "[a]ny communications sent on Dec. 11 or Dec. 12, 2018 containing 'propublica', 'soros', or 'courier-journal' to or from Gov. Matt Bevin, communications director Elizabeth Kuhn, or chief of staff Blake Brickman." You added that your request includes communications using "private email addresses or private devices."

I have enclosed responsive records that are subject to production under the Open Records Act. Two notes: First, I have withheld approximately 15 pages of responsive records under KRS 61.878(1)(i) and (j), all of which are either preliminary drafts or records that are preliminary to final agency action that have not been adopted and made part of final agency action. I also have withheld two pages of responsive records related to the Governor's schedule under *Courier-Journal v. Jones*, 895 S.W.2d 6, 7-10 (Ky. App. 1995).

Second, your request for records on private devices or using private email addresses is denied. Those records, to the extent any exist, are not covered by the Open Records Act. The Open Records Act defines a "public record," which generally is subject to disclosure, as a record "prepared, owned, used, in the possession of or retained by a public agency." KRS 61.870(2). Any responsive records on private devices or using private email addresses, to the extent they exist, are not "prepared, owned, used, in the possession of or retained by a public agency." *See id.*; *see also* 15-ORD-226 ("Cell phone communications, including calls or text messages, made using a private cell phone that

is paid for with private funds, are not prepared by or in the possession of a public agency.""). It cannot be the case that a person who chooses public service sacrifices his or her ability to maintain a private device that he or she pays for with private dollars. To conclude otherwise would usher in startling consequences, practical and even constitutional.

Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, reading "Matthew F. Kuhn". The signature is written in a cursive style with a large, stylized "K" and "L".

Matthew F. Kuhn  
Deputy General Counsel

Enclosures

**Kuhn, Matt F (Gov Office)**

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**From:** Loftus, Tom <tloftus@gannett.com>  
**Sent:** Tuesday, December 11, 2018 9:59 AM  
**To:** Kuhn, Elizabeth G (Gov Office)  
**Subject:** Community forums

Elizabeth:

I'm trying to wrap up a story today on the community forums I attended last week. Couple of questions:

Q1. Why has governor Bevin decided to have many community forums this year?

Q2. How many have there been? (I count 22 between May and through Monday)

Q3. What is your response to anyone who might say they're political, an effort to help governor get re-elected?

Tom Loftus  
Courier Journal  
875-5136

**Kuhn, Matt F (Gov Office)**

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**From:** Kuhn, Elizabeth G (Gov Office)  
**Sent:** Tuesday, December 11, 2018 10:07 AM  
**To:** Loftus, Tom  
**Subject:** RE: Community forums

Thanks, Tom. What's your deadline?

**From:** Loftus, Tom <tloftus@gannett.com>  
**Sent:** Tuesday, December 11, 2018 9:59 AM  
**To:** Kuhn, Elizabeth G (Gov Office) <elizabethg.kuhn@ky.gov>  
**Subject:** Community forums

Elizabeth:

I'm trying to wrap up a story today on the community forums I attended last week. Couple of questions:

Q1. Why has governor Bevin decided to have many community forums this year?

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Tom Loftus  
Courier Journal  
875-5136

**Kuhn, Matt F (Gov Office)**

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**From:** Loftus, Tom <tloftus@gannett.com>  
**Sent:** Tuesday, December 11, 2018 1:59 PM  
**To:** Kuhn, Elizabeth G (Gov Office)  
**Subject:** Re: Community forums

Great. Thanks.  
Tom

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**From:** Kuhn, Elizabeth G (Gov Office) <elizabethg.kuhn@ky.gov>  
**Sent:** Tuesday, December 11, 2018 11:42:19 AM  
**To:** Loftus, Tom  
**Subject:** RE: Community forums

Tom,

You can attribute these responses to me.

Since May, Gov. Bevin has held 24 community forums across the Commonwealth. These forums are typically paired with another event in the area (e.g. facility tour, meeting with local officials, cabinet meeting, etc.) so that the Governor is able to spend as much time as possible in each community. Gov. Bevin wants to use the time that he is in Kentucky communities to talk to citizens in an informal setting and hear their ideas, concerns, and opinions.

It's ridiculous to insinuate that these are "political" events, because the dialogue is driven solely by those who attend the forum, and no topic is off limits. There has never been a Governor who has been this accessible to Kentuckians—and who has taken the time to answer any and every question he is asked by citizens, regardless of topic.

**From:** Loftus, Tom <tloftus@gannett.com>  
**Sent:** Tuesday, December 11, 2018 9:59 AM  
**To:** Kuhn, Elizabeth G (Gov Office) <elizabethg.kuhn@ky.gov>  
**Subject:** Community forums

Elizabeth:

I'm trying to wrap up a story today on the community forums I attended last week. Couple of questions:

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Tom Loftus  
Courier Journal  
875-5136

## Kuhn, Matt F (Gov Office)

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**From:** West, Susan B (PPC)  
**Sent:** Wednesday, December 12, 2018 8:17 AM  
**To:** Kuhn, Elizabeth G (Gov Office); Russell, Gail G (PPC)  
**Subject:** FW: Google Alert - Kentucky Horse Racing Commission

### Google Alerts

## Kentucky Horse Racing Commission

Daily update · December 12, 2018

### NEWS

#### Churchill Downs fined \$1000 a day for violations at Derby City Gaming

Courier Journal

The **Kentucky Horse Racing Commission** has been imposing fines of \$1,000 a day on Churchill Downs for violating regulations for its "instant racing" ...



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#### Positive tests prompt **Kentucky commission** to outlaw three medications

Daily Racing Form

The **Kentucky Horse Racing Commission** on Tuesday placed three drugs on its prohibited substances list following positive findings for two of the ...

**Kentucky Racing** Commissioners Express Frustration At More Delays For Turfway Park Renovation - Paulick Report

Turfway Moves to 'Plan B' on Historical **Racing** - BloodHorse.com

Full Coverage



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#### KHRC Imposes \$1000 Per Day Fine On Churchill's Derby City Gaming

Paulick Report

The **Kentucky Horse Racing Commission** has fined Churchill Downs, Inc. for violations with the 900 Ainsworth Game Technology historical racing ...



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